

THE BLUE SHEET

FEBRUARY 2004 EDITION



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LEGISLATION

The following is a list of legislation that the Governor's Commission is monitoring during this session.

CACR 21 – state education property tax exemption for certain disabled veterans.

SCR 5 – commending the United States Congress for supporting full concurrent receipt of disability and retirement benefits by disabled veterans.

SB 314 – relative to access to medical records.

SB 322 – relative to payment of medical benefits costs for disabled group II members of the retirement system.

SB 323 – relative to the age groups under the elderly property tax exemption.

SB 331 – relative to the offset of workers' compensation lump sum payments against retirement system disability allowances and death benefits.

SB 332 – relative to tolls for disabled veterans.

SB 339 – relative to the involuntary commitment of certain persons found not competent to stand trial for certain criminal offenses.

SB 376 – making an appropriation to the department of health and human services for mental health services.

SB 398 – relative to residency requirements for Medicaid recipients in nursing homes.

SB 404 – establishing a committee to study the feasibility of providing statewide access to "Newline for the Blind."

SB 408 – relative to a civil liability exemption for claims resulting from weight gain and obesity.

SB 411 – relative to liability for special education transportation costs.

SB 415 – continuing the expanding to all counties the Grafton county court pilot project relative to abuse and neglect hearings.

SB 421 – relative to charter schools.

SB 435 – relative to accessible housing for persons of all abilities.

SB 472 – relative to updating the terminology in statutes affecting children with special health care needs.

SB 516 – relative to special needs trusts.

HB 1213 – exempting persons age 70 and older from the state and local education portion of property taxes.

HB 1232 – allowing a disabled person to enroll in a class free of charge at any institution within the university system of New Hampshire, provided a seat is available in the class.

HB 1254 – granting certain disabled veterans an exemption from state education property taxes.

HB 1259 – relative to the medical certification required for a walking disability plate of placard.

HB 1263 – establishing a committee to study the feasibility of creating a trust fund to support a family and disability leave program.

HB 1291 – relative to elderly and handicapped priority low-income housing.

HB 1318 – relative to a senior care provider program and making an appropriation therefore.

HB 1321 – relative to claims before the state commission on human rights.

HB 1322 – relative to the rules for the operation and regulation of supported residential care facilities.

HB 1323 – relative to the rules for the operation and regulation of residential care facilities.

HB 1333 – extending the veterans/ property tax credit to all honorably discharged veterans.

HB 1346 – relative to income qualification in the elderly property tax exemption.

HB 1365 – relative to protecting hearing ear dogs, guide dogs, and service dogs.

To find out information on any of these bills go to www.state.nh.us, click on legislative branch, click on quick search and then enter the bill number or key word.

ADA MEDIATION

*A Michigan bowling center agreed to install a platform and ramp to one of its bowling lanes within one month. The center also renovated its entire second floor to make it accessible and added accessible parking spaces.

*An Ohio shopping mall and movie theater agreed to make renovations to provide accessible restrooms, parking, and movie theaters within three months. Three of the five movie theaters will be made accessible and movies will be rotated between theaters so all movies will be shown in the accessible theaters. In addition, the theater will provide accessibility symbols in its advertisements to show which movies are in the accessible theaters.

*On Ohio hotel agreed to remodel its lobby restrooms to be accessible to persons with disabilities, increase the number of accessible parking spaces near the hotel pool, research the cost of installing accessible restrooms by the pool, and train personnel about how better to respond to the needs of persons with disabilities. The hotel also apologized to the complainant and her family and provided a free week-day package for them at the hotel.

*A restaurant in Texas agreed to provide directional signage at an inaccessible restroom to indicate the location of the accessible restroom, write a letter of apology, and provide \$2,000 in compensation to the complainant.

*A country club in Florida will remodel its facilities to provide accessible restrooms, train personnel about the ADA, and pay the complainants \$1,000.

*A Missouri college agreed to develop a plan to provide access to a historical building, including installation of a ramp. Until these changes are implemented, the college agreed to provide assistance for individuals in entering the building and to make a video describing the historical information about the building available for individuals who prefer that format. The college also agreed to install a ramp to provide access to the bleachers in its sports facility, to provide van accessible parking spaces with appropriate signage, and to train personnel to assist individuals with disabilities.

*A wheelchair user complained that an Ohio restaurant did not have an accessible smoking section. The restaurant manager agreed to create another smoking section that is accessible to people with disabilities and to instruct the staff about this new section. The manager agreed to consult with the complainant about making the bar accessible. The manager also agreed to make the modifications necessary for a van accessible parking space.

*In Virginia, a wheelchair user complained that a condominium sales office did not have an accessible entrance. The condo builder agreed to renovate the sales office entrance to make it accessible. The builder agreed to display a sign stating the policies they have created to comply with the ADA, the policies

include providing auxiliary aids and services upon request as needed to ensure effective communication, making informational videos available upon request, and providing a method of requesting any other accommodation that a person with a disability may require. The builder agreed to donate \$2,500 to a disability rights organization and to pay the complainant \$1,000.

*In Pennsylvania, a person with a mobility impairment complained that a professional building did not have an accessible entrance or accessible parking. The building owner agreed to install a ramp and build a walkway at the front entrance to make it accessible for people with disabilities and to create an accessible parking space near the ramp. The owner also agreed that the complainant, who cannot stand for long periods of time, could call the manager or one of the tenant's of the building to have a chair placed in the building's lobby when needed.

*A Maryland doctor who had refused to pay for a qualified sign language interpreter for a patients office visit agreed to institute a policy for hiring interpreters and notifying deaf patients that sign language interpretation will be provided on request at no cost to deaf patients. The doctor also agreed to train office staff about effective communication with patients with hearing impairments and to pay the complainant \$300.

*In New York a person who represents people who are deaf or hard of hearing complained that a doctor refused to hire a qualified sign language interpreter for a patient's office visit when a request is made at least one week in advance. The doctor agreed that the request may be made by the patient's representative, or via a telephone relay communication, or by any other means chosen by the patient. The doctor also agreed to educate his office staff regarding this policy and the ADA.

*A person with a visual impairment complained that a Massachusetts educational institute did not provide information about course offerings in alternative formats and did not make reasonable modifications in their procedures and practices to enable people with disabilities to take the courses. In addition, the person complained that the institute had a safety policy that excluded people with disabilities based on broad generalizations instead of actual risks. The institute agreed to make information about registration times and course offerings available on audio tape on a telephone information service used by people with disabilities. The information will also be available for distribution on audio tape and in large print if requested. The institute agreed to modify its admission policy and make determinations on a case-by-case basis as to whether a particular individual with a disability is able to function adequately and safely in a class. The institute agreed to make every effort to assist a person with a disability to attend the class of his/her choice. Technical assistance will be requested from various disability organizations so that all available information may be considered in order to assist a person with a disability to participate in a class in the most effective way.

*In suburban Maryland, a wheelchair user complained that a restaurant refused to allow her mobility assistance dog to enter. The restaurant owner apologized and agreed to educate himself and his staff about the ADA. He agreed to

contact other professionals in his field, as well as a restaurant trade organization to inform them of his experience and educate them about the ADA. He agreed to make a donation to a charitable organization for service animals.

*A New York dance club agreed to institute a policy to accommodate people with disabilities when they call to make arrangements to attend functions and to review all future contracts with performers to ensure that performers do not interfere with accessibility. The club also agreed to identify barriers and remove them if readily achievable, to provide four complimentary tickets to the complainant for any performance the complainant chooses and to make a substantial compensatory payment to the complainant.

*A sports arena in California agreed to change its ticketing policy to make tickets for wheelchair accessible seats available for all events through box office and telephone sales without the necessity of providing a "plaque" as proof of disability, allow companions to accompany individuals who use wheelchairs, and allow exchanges of inaccessible seats for accessible seats for individuals who use wheelchairs. The arena announced the changes in a press release.

*A New Jersey professional school agreed to change its policy barring the complainant from attending because she has leukemia, to change its policy requiring the complainant to sign a special release form, and to refrain from disclosing the complainant's condition to other students.

*A New York restaurant that had refused to allow a person with a hearing dog to enter agreed to post signs notifying the public that service animals are permitted to enter, train personnel regarding title II of the ADA, write a letter of apology to the complainant, and pay the complainant \$200.

*Two Florida wheelchair users complained that a restaurant located in a shopping center refused them to enter or to provide them service because they used wheelchairs. The owner agreed to welcome and serve both complainants as patrons. The owner agreed to post a sign in the front window of the restaurant stating a policy of nondiscrimination against people with disabilities. The owner agreed to educate all employees about the rights of people with disabilities. The shopping center owner agreed to provide space for a disability awareness event to be held at the shopping center, cooperate with the organization presenting the event, and contribute \$250 towards publicity for the event. The restaurant owner agreed to contribute some of the refreshments for the event. Finally, the restaurant owner agreed to pay the complainants \$500 and the shopping center owner agreed to pay \$500 in attorney's fees.

*In Pennsylvania a wheelchair user complained that a restaurant seated him only after he agreed to move from his wheelchair to a seat in a booth. The restaurant owner apologized and agreed to instruct her staff in managing the space in the restaurant so that it is accessible for patrons with disabilities.

EARLY STAGE MS RULED NOT A DISABILITY

A worker who was fired soon after telling his bosses that he suffers from MS cannot rely on the close timing of his announcement and the firing to prove that it

was the result of discrimination if the employer had already documented months of substandard job performance prior to learning of his condition, a federal judge has ruled.

In *Yudkovitz v. Bell Atlantic Corp.*, U.S. District Judge Legrome D. Dais granted summary judgment in favor of Bell Atlantic after concluding that plaintiff Louis Yudkovitz had failed to rebut the employer's legitimate, non-discriminatory reason for firing him.

Significantly, Davis also held that Yudkovitz could not even make a prima facie case of discrimination under the ADA because a case of early-stage MS that causes annual "flare-ups" does not qualify as a disability under the ADA without proof that the condition substantially impaired a major life activity.

"There is nothing in the record to suggest that Yudkovitz's condition played any role in Verizon's criticism of his performance or its decision to terminate his employment. To the contrary, the record demonstrates that Yudkovitz's managers perceived his work to be deficient and were critical of Yudkovitz's performance beginning at least nine months before his termination," Davis wrote.

"That Yudkovitz's termination came within weeks of his disclosure, standing alone, is not sufficient evidence of pretext," Davis wrote.

EEOC SETTLES DISABILITY DISCRIMINATION LAWSUIT AGAINST WORLDWIDE FLIGHT SERVICES AND AMERICAN AIRLINES FOR \$50,000

The EEOC has settled a disability discrimination lawsuit against Worldwide Flight Services, Inc. and American Airlines, Inc., for \$50,000 on behalf of a qualified job applicant who was being treated for a mental disability covered under the ADA. The lawsuit alleged that the applicant was improperly denied a job because of his mental disability, and that improper inquiries were made about his disability.

In its lawsuit, filed in U.S. District Court of Rhode Island, the EEOC claimed that the applicant had applied for a job as a ramp clerk/cabin cleaner with AMR Services at T.F. Green Airport in Warwick, Rhode Island. (AMR Services was in the same corporate family as American Airlines, but was later purchased by Worldwide Flight Services.) The lawsuit alleged that American Airlines, who conducted a pre-employment medical evaluation of the applicant, made improper medical inquiries of the applicant before he was given a real conditional job offer, and that in response to the inquiries, the applicant disclosed that he was being treated for mental illness.

The lawsuit further alleged that the improperly obtained information about the applicant's mental disability was used in deciding not to hire the applicant for the job. Under the ADA, employers are generally forbidden from inquiring about the disability of a job applicant, and the ADA contained strict confidentiality requirements. The EEOC filed suit after exhausting its conciliation efforts to reach a voluntary pre-litigation settlement. The parties reached a voluntary settlement to resolve this case, although defendants denied the allegations that it violated the ADA.

The Consent Decree settling the suit states that Worldwide Flight Services will pay \$50,000 to the applicant and his attorney, the Rhode Island Disability Law Center, in compensatory damages and attorneys fees and costs. The Consent Decree also provides that Worldwide Flight Services and American Airlines will conduct medical examinations of job applicants of Worldwide Flight Services consistent with the ADA, and only after real conditional offers of employment have been issued as specified in EEOC's Enforcement Guidance.

JOB APPLICANTS WITH DISABILITIES TO BENEFIT FROM FACT SHEET ON RIGHTS THROUGHOUT HIRING PROCESS

The EEOC released a new fact sheet designed to educate job applicants on how Title I of the ADA protects their rights throughout the hiring process. This tool is EEOC's most recent strategy in a series of efforts to advance the employment of individuals with disabilities.

'While many people with disabilities are aware of the ADA, they may not fully understand how the law protects them. The EEOC created this fact sheet to empower job seekers with disabilities by helping them to navigate all aspects of the hiring process,' said Commission Chair Cari M. Dominguez.

EEOC SUES KMART FOR DISABILITY DISCRIMINATION

The EEOC filed suit against retail giant Kmart Corporation for refusing to hire an applicant because of his mental disability. In the lawsuit the EEOC claims that Kmart violated the ADA when it refused to hire Edward Jones as a stocker.

Jones, age 35, was diagnosed in his early childhood as having mild mental retardation, but was qualified to perform the duties of stocker. Moreover, Jones had scored higher on Kmart's pre-employment questionnaire than applicants Kmart later hired as stockers.

Jones went to Kmart with his job coach to apply for work. He completed the application process and successfully completed Kmart's pre-employment questionnaire. Based upon his responses to the questionnaire, Jones' score placed him in Kmart's "Recommend Hire" group of applicants. Nevertheless, Kmart refused to hire Jones for a stocker position.

The Commission filed suit against Kmart Corporation only after its conciliation efforts failed to result in a voluntary pre-litigation settlement. The EEOC's complaint seeks back pay, compensatory damages, punitive damages and injunctive measures to prevent future discrimination against individuals with disabilities.

EEOC SUES THE HOME DEPOT FOR TERMINATING EMPLOYEE WITH DISABILITY

The EEOC filed an employment discrimination lawsuit against Atlanta, Georgia based retail giant The Home Depot, alleging the company failed to provide an employee with a reasonable accommodation and terminated her because of her disability in violation of the ADA.

The lawsuit alleges that The Home Depot failed to properly accommodate Carolyn Pisani by terminating her because she is developmentally disabled in that she is a person with mental retardation resulting in learning disabilities. EEOC claims that Home Depot failed to accommodate Pisani by not involving her job coach when it disciplined and terminated her for allegedly failing to report to work.

The agency's complaint seeks monetary and injunctive relief including back wages, compensatory damages, a change in employment policy to eliminate future disability-based discrimination, punitive damages, and the re-employment of Pisani with the reasonable accommodating of a job coach.

Further information about the fact sheet is available at www.eeoc.gov.

TOLL-FREE HOTLINE IS AVAILABLE FOR AIR TRAVELERS WITH DISABILITIES

A toll-free hotline established by DOT's Aviation Consumer Protection Division is now available to provide guidance on the rights of air travelers with disabilities under the law and to help resolve disability-related air travel service problems.

The hotline is designed to assist air travelers with disabilities in resolving issues on the spot as they occur or in advance of travel. Hotline operators facilitate airline compliance with DOT's regulations by outlining to the passenger and the airline involved appropriate solutions to disputes, such as those that may arise over the boarding of service animals, the provision of boarding assistance, or the stowage of wheelchairs in the cabin, among others. Operators will contact air carriers as necessary in order to resolve these and other types of issues. In addition, callers can receive general information instantly over the phone or can request printed information about the rights of air travelers with disabilities. The hotline can be reached at (800) 778-4838 (voice) or (800) 455-9880 (TTY) from 7:00 a.m. to 11:00 p.m. Eastern time.

FREE COMPUTERS

Do you have a disability? Are you in need of a free computer? The Jim Mullen Foundation is proud to provide free computers for people who have a disability. They specialize in providing computers for anybody, especially for those individuals who think they are unable to use one.

Go to www.jimmullen.com/ZoomSeq.asp?id=7948 and print out the official Computer Give-a-way Application. Tell them who you are, the nature of your disability (along with verification from your doctor), and they will provide you with a free computer. They will also attempt to provide you with the necessary adaptive hardware and software so that you will be most productive with your new computer.

MERCK PATIENT ASSISTANCE PROGRAM

Sometimes affording prescription medicines can be difficult. Merck has created the Patient Assistance Program to keep affordable medicines within your reach. This private and confidential program provides medicine free of charge for up to

one year to eligible individuals who do not have prescription drug coverage and who, without their assistance, could -not afford needed Merck medicines.

To receive the booklet to help you understand the program or any question you may have call 800-727-5400, from 8:00 a.m. to 8:00 p.m. ET, Monday through Friday.

NH EDUCATIONAL SURROGATE PARENT PROGRAM

Volunteer Educational Surrogate Parents are urgently needed. Children with disabilities have a right to be represented by a parent in the special education process. Surrogate Parents represent the educational needs of children with disabilities who are wards of the state, or whose parents are unknown or cannot be located. The sole responsibility of the Surrogate Parent is to represent the assigned child in making special education decisions. Surrogate parents are not responsible for any financial costs or direct care of the child.

For more information on this program, or to receive an application, please call the Parent Information Center at (603) 224-7005 or (800) 232-0986 or visit their website at: www.parentinformationcenter.org.